GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

A.P. Housing Board – Joint Venture Project at Madhurawada, Visakhapatnam with M/s NCC Vizag Urban Infrastructure Limited – Settlement through dispute resolution mechanism – Orders – Issued.

MUNICIPAL ADMINISTRATION & URBAN DEVELOPMENT (UH) DEPARTMENT

G.O.MS.No. 64 **Dated: 12-02-2019**

Read the following:-

1. Representation of M/s NCC Vizag Urban Infrastructure Limited, Dated:19.12.2016.
2. From the VC&HC, APHB, Lr.No.145/VZG/MWA/AE/PC/2005, dt:27.12.2016, 18.05.2017, 14.12.2018, 17.12.2018 & 19.01.2019.

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O R D E R:

In the reference 2nd read above, it has been brought to the notice that M/s NCC Urban Infrastructure Limited was awarded Joint venture project for development of 97.30 Acres of land at Madhurawada, Visakhapatnam on payment of development fee at Rs.93.20 Lakhs per acre besides payment of revenue share at 1.75% from residential and 2% from commercial development. Accordingly, development agreement was concluded on 16-03-2007 and power of attorney was executed on 04.02.2010 to undertake development prior to the effective date. As there was a delay in commencement of all the Joint Venture Projects, the revenue share was doubled and revised revenue share is 3.5% from residential and 4% from commercial development. The developer has satisfied all the applicable conditions precedent except obtaining permissions such as change of land use, layout and building plans. It has been further informed that as per Master Plan out of 97.30 Acres, 33.00 Acres is residential, 14.80 Acres Hilly Area and 49.50 Acres is Agricultural and required change of land use to meet development requirement of 90% residential and 10% commercial. Change of land use of Hilly Area of 14.80 Acres was approved vide G.O.Ms.No.425 MA&UD Department, Dated 07.07.2009. Change of land use of Agriculture area of 49.50 Acres was approved vide G.O. Ms.No.177 MA&UD Department dated 06.09.2014.

2. The Vigilance & Enforcement have conducted enquiry and submitted Alert Note dated 23.6.2012 and accordingly a show cause notice was issued by the Andhra Pradesh Housing Board to the Developer on the events of default. The Developer has informed that they shall commence the development on receipt of the conversion approval. APHB obtained legal opinion on 30.11.2012 on the recommendations of Vigilance & Enforcement Department which opined that dispute resolution mechanism shall be invoked before termination. As per the directions of the Government, the Additional Advocate General has also opined that, APHB has to invoke dispute resolution mechanism before termination. After examining the matter, the APHB, without initiating the Dispute Resolution Mechanism (DRM) issued termination notice to the developer on 6.12.2013 and revoked the Power of Attorney (PoA).

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3. Aggrieved by the Termination, Developer filed a WP No.202 of 2014 in the High Court of Andhra Pradesh and obtained status quo orders on 3.1.2014. Counter Affidavit along with Vacate Stay Petition was filed and an expedite petition was also filed by APHB on 6.8.2015 and however the same is yet to come up for hearing.

4. In the meanwhile, the Developer has submitted a representation vide its letter dt.19.12.2016 to APHB requesting for amicable settlement and has proposed the following 3 options :

(a) To make the land free hold after receipt of revenue share payable to APHB (OR)
(b) Return the amounts paid by them along with interest @ not less than 12% p.a (OR)
(c) To execute revised Development Agreement between APHB and the Developer, duly incorporating the mutually agreed terms and the time lines for the implementation of Project.

5. The contention of the Developer is that the Change of Land use was beyond their control as the matter is a process involving other departments of the government. As per the Development Agreement, the role of APHB is limited to the extent of extending 'reasonable support and cooperation' in getting the requisite approvals from the Government including change of Land Use. Neither APHB nor the Developer has invoked Dispute Resolution Mechanism during the period on any matter of difference or dispute as envisaged in the Development Agreement. Though the recommendations of Vigilance & Enforcement Department are recommendatory, APHB, based on recommendations of Vigilance & Enforcement Department report on its Alert Note dt.23.06.2012, issued Termination Notice to Developer on 16.12.2013 and revoked the Power of Attorney. The Vigilance & Enforcement Department itself, at one point, in their Alert Note, recommended that if the Developer comes forward for negotiation, APHB may negotiate on such terms that will benefit increase in the Development fee as per the present market value. However, neither party have engaged the other and conducted negotiation.

6. Government examined the matter and observed that in this case, the recommendations of the Vigilance & Enforcement Department has been accepted by the Government and acted upon by the Andhra Pradesh Housing Board. Now what remains is further proceedings after complying with the Vigilance recommendations. As mentioned above, there is a Court case pending against the termination. The Hon'ble High Court in W.P.No.202 of 2014, dated:03.01.2014 has ordered Status Quo. As opined by the AAG and Law Firm that in case of termination of the Development Agreement, the dispute resolution mechanism needs to be invoked as envisaged in the development agreement and the amount paid by the Developer towards Development fees has to be returned with or without interest. The present proposal by the developer has to be analysed and considered as part of Dispute Resolution Mechanism and as part of the process involved aftermath termination and to be decided thereon.

7. Government considering the initiative in boosting development of residential / commercial projects to cater to the ever growing needs of the people in the State and considering the time that may be taken in the adjudication of the

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pending matter before the Hon'ble High Court, the offer of the developer who expressed his interest to seek amicable settlement is analysed and decided to consider the offer of the developer for amicable settlement for making the land free hold after receipt of Revenue share payable to APHB, subject to withdrawal of Writ Petition filed and payment of revenue share and cost of the LIG Houses as assessed.

8. Accordingly, Government hereby order that the present cost of the project, including the estimated saleable value of areas of the Project as on date, shall be evaluated by two reputed valuers as per the developmental standards. Upon valuation, the highest of the project cost and the said saleable value is to be considered. Project cost of Residential @ 90% and Commercial @ 10% to be arrived on the highest of the Project cost as valued. The Revenue share shall be assessed and collected on both Residential @ 3.5% & Commercial @ 4% as per the development agreement conditions taking into consideration the highest valuation with 20% extra over and above the Revenue share so arrived. It is also ordered that the maximum market value of LIG units with gross built up area of 300 – 450 sft., per unit to be developed in the 5% of the ground area of 97.30 acres as assessed by the valuers considering maximum FSI is to be collected from the developer after deducting Rs.450 per sft., as per the development agreement. The land will be made free hold after receipt of Revenue share payable to APHB, subject to withdrawal of Writ Petition No.202 of 2014 filed before the Hon'ble High Court and payment of revenue share and cost of the LIG Houses as assessed.

9. The Vice Chairman & Housing Commissioner, Andhra Pradesh Housing Board, Vijayawada shall appoint two (2) reputed valuers to assess the present cost of the Madhurawada Project including the present saleable value of the Project and work out the revenues on the highest valuation of the said saleable value of the Project with 20% extra over and above the Revenue share and also market value of LIG Units as envisaged.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

R.KARIKAL VALAVEN
PRINCIPAL SECRETARY TO GOVERNMENT

To
The Vice-Chairman & Housing Commissioner,
Andhra Pradesh Housing Board, Vijayawada.

Copy to:-
The Spl.CS to Hon'ble Chief Minister.
The PS to Minister (MA).
The PS to Prl.Secretary, MAUD.
The Finance (FMU.EFS&T, MAUD & DRDA) Department.
The Law Department.
The General Administration (Cabinet) Department.
M/s NCC Urban Infrastructure Development Corporation Ltd., Hyderabad.
Sf/Sc.

// FORWARDED :: BY ORDER //

SECTION OFFICER